



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

November 13, 2003

Town of Wolfeboro
Department of Public Works
Attn: Mr. Paul Skowron, Town Manager
9 Union Street, PO Box 629
Wolfeboro, NH 03894

Re: Docket No. AF 03-038 - Administrative Fine by Consent Agreement

Dear Mr. Bilafer:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Harry T. Stewart, P.E., Water Division Director, and accepted by Commissioner Michael P. Nolin on November 12, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael Scalfani,
Legal Assistant

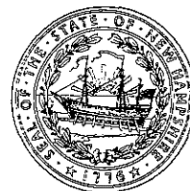
cc: Harry T. Stewart, P.E., Director, Water Division
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, Hearings and Rules Attorney
Mark R. Harbaugh, DES Legal Unit
John R. Bush, P.E., Administrator, DES WWEB
Sharon Ducharme, DES WWEB
Mitch Locker, DES WWEB
Joy Hilton, EPA Region I
David W. Dedian, Woodard & Curran



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DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

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Town of Wolfeboro
Department of Public Works
Attn: Mr. Marty Bilafer, Director
9 Union Street, PO Box 629
Wolfeboro, NH 03894

**ADMINISTRATIVE FINE
BY CONSENT**

NO. AF 03-038

Re: Wolfeboro WWTF

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and the Town of Wolfeboro pursuant to RSA 485-A:22, V. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Water Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having main offices at 29 Hazen Drive, Concord, NH.
2. The Town of Wolfeboro ("Town") is a duly constituted municipality of the State of New Hampshire having a mailing address of P.O. Box 629, Wolfeboro, NH 03755.

III. BACKGROUND

1. Pursuant to RSA 485-A:8 and RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters and has developed a permit system. As part of this program, the Commissioner of DES has adopted Env-Ws 1700 establishing Surface Water Quality Regulations for the state's surface waters.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations relating to this program. Pursuant to this section, the Commissioner has adopted Env-C 603 - Surface Water Quality and Pollution Control, to establish the schedule of fines for such violations.
3. The Town owns and operates a wastewater treatment facility ("WWTF") located at Filter Bed Road, Wolfeboro, NH.
4. The Town operates the WWTF and effluent disposal system under DES Ground Water Permit No. 198705015-W-001.
5. The Town has contracted Woodard and Curran ("W&C") to operate and maintain the WWTF.
6. W&C is a private consulting firm whose offices are located at 41 Hutchins Drive, Portland, ME 04102.

7. Pursuant to the Laws of 1967, 311:1, XLVIII, all the surface waters of the Winnepesaukee River watershed from their sources to confluence with the Pemigewasset River to form the Merrimack River are classified as Class B waters.

8. RSA 485-A:13, I (a) states that "It shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface water or groundwater of the state without first obtaining a written permit from the Department of Environmental Services."

9. Pursuant to RSA 485-A:8, II, "there shall be no disposal of sewage or waste into Class B waters except those that have received adequate treatment to prevent the lowering of the biological, physical, chemical or bacteriological characteristics below those given". Further, "Class B waters shall be of the second highest quality and shall have no objectionable physical characteristics... or greater than 406 *Escherichia coli* ("*E. coli*") per 100 milliliters in any one sample."

10. On June 5, 2003, at approximately 1:25 p.m., W&C personnel began the sludge wasting procedure to reduce the sludge blanket depth in the clarifiers at the WWTF, by directing the waste activated sludge flow to one of the two sludge thickening tanks.

11. On June 5, 2003, at approximately 3:30 p.m., W&C personnel began operations to reverse the sludge wasting procedure, but did not complete the task before getting distracted to another task at the WWTF.

12. W&C personnel did not complete the final step to terminate the wasting operation before leaving the WWTF at the end of the work day on June 5, 2003.

13. At approximately 8:40 pm on June 5, 2003, W&C personnel returned to the WWTF upon realizing the wasting procedure was not terminated properly and proceeded to correctly shut down the wasting procedure. According to discussions with W&C, the operator, at this time, was not aware the sludge thickening tanks were overflowing and did not check the tanks.

14. According to W&C personnel, the sludge thickening tanks' capacity was surpassed and approximately 20,000 gallons of sludge flowed out of the tanks.

15. W&C personnel explained that the sludge flowed from the thickening tanks, out of the building, to the swale area that follows the WWTF's driveway grade, into a field inlet drainage structure, across the grassy swale area leading to the grate covered opening of a second field inlet, through the culvert pipe beneath Filter Bed Road, and discharged to an adjacent wetland area which is connected to Back Bay of Lake Winnepesaukee.

16. On June 6, 2003, upon returning to the WWTF at approximately 8:30 a.m., W&C personnel assessed the area of the sludge discharge and reported the discharge to DES via telephone.

17. W&C personnel explained that they spread lime on the spill area and then raked the lime and residual sludge.

18. On June 6, 2003, DES personnel inspected the WWTF sludge discharge area; took photographs; assessed the effectiveness of W&C personnel's clean-up effort; and collected samples within the discharge area.

19. DES collected samples of the sludge material from five points along the flow path described below:

- a) The vegetated area located at the culvert pipe outlet along Filter Bed Road, across from the WWTF driveway entrance ("Site #1");
- b) Within the wetland area downstream of Site #1 ("Site # 2");
- c) At the entrance of the grate covered field inlet, adjacent to the shoulder of Filter Bed Road ("Site #3");
- d) In the grassy swale area between the two field inlet drainage structures ("Site #4"); and
- e) Inside the first field inlet drainage structure ("Site #5").

20. Laboratory analysis of the collected wastewater samples detected *E. coli* values (counts per 100 ml) of 4300, 700, 4800, 4500, and 10, for sample point Site #s 1, 2, 3, 4, and 5, respectively. The laboratory analytical results are included as Attachment 1. The Locator numbers shown on the laboratory results correspond with the numbering assigned to the sample points listed in Paragraph #19.

21. NH Code of Administrative Rules Env-Ws 1703, Water Quality Standards Section 1703.06 Bacteria (a), states uses and criteria associated with bacteria shall be as set forth in RSA 485-A:8, I, II, and V.

22. By letter dated June 16, 2003, W&C provided DES an account of the circumstances that resulted in the sludge overflow on June 5, 2003.

23. In the letter, W&C estimated the sludge thickening tank spill began sometime after 5:45 p.m. and ended by 8:40 p.m. on June 5, 2003.

24. The letter also detailed the corrective actions taken to prevent future spills from occurring during the sludge wasting procedure, and during normal operation, by implementing an alarm system enhancement project. The installation included a new alarm float switch in each of the sludge thickener tanks, wiring the float switches into the WWTF's auto dialer alarm system, and the installation of new high water float switches to monitor the four aeration tanks. These improvements cost approximately \$2,800 based on copies of invoices supplied by W&C.

IV. ALLEGATIONS

- 1. The Town violated RSA 485-A:13 by discharging sewage sludge to a surface water of the State without first obtaining a written permit from DES.
- 2. The Town violated RSA 485-A:8, II by exceeding the *E. coli* limit with a daily count greater than 406 counts/100 ml.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

- 1. For violating RSA 485-A:13, I (a), Env-C 603.05 (a) specifies a fine of \$2,000 per 5,000 gallons or portion thereof discharged or \$2,000 per hour or portion thereof that the sewage or other wastes are discharged, whichever is greater. Based on the information provided in W&C's June 16, 2003 letter, the Town discharged 20,000 gallons of sludge laden wastewater onto the ground and ultimately into the surface waters of the State of NH. For this violation, DES is seeking a fine of \$8,000.

2. For violating surface water quality standards specified in RSA 485-A:8 II, Env-C 603.08(c) specifies a fine of \$2,000 per violation for each parameter violated. Based on the laboratory analytical results for the samples collected on June 6, 2003, DES is seeking a fine of \$2,000.

3. DES agrees to waive \$2,000.

4. The Town agrees to pay \$2,000 due upon execution of this Agreement by the Town.

5. The Town also agrees to complete the following Supplemental Environmental Project within 60 days of the execution of this Agreement. Specifically, the Town agrees to make improvements as described in the September 18, 2003 W&C proposal to the sludge wasting procedure by providing engineering controls and installing electrically operated valve actuators with an alarm switch and timer to the existing 3-way valves. Estimated materials include: 1) two valve actuators; 2) one programmable controller; and 3) two valve positioning indicator (alarm) switches.

6. Payment made under Paragraph V.4. shall be made by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sciafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

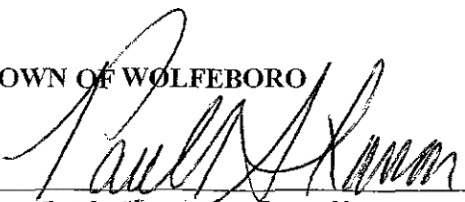
7. If any payment is made by check that is returned due to insufficient funds, pursuant to NH RSA 6:11-a DES may charge a fee in the amount of 5% of the face amount of the check or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check, to cover the costs of collection.

8. By executing this Administrative Fine by Consent, the Town of Wolfeboro waives its rights to a hearing on or any appeal of the administrative fines identified in Paragraphs V.1 through V.5, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

9. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of the Town of Wolfeboro, the Director of the Water Division, and the Commissioner of DES.

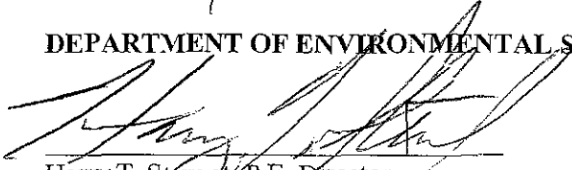
10. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of DES' rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

TOWN OF WOLFEBORO

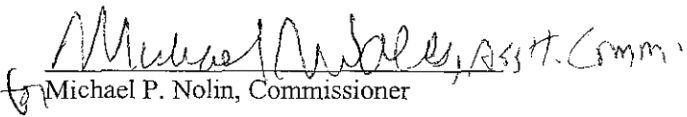

By: Paul Skowron, Town Manager
Duly authorized

10/27/03
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES


Harry T. Stewart, P.E., Director
Water Division

11/10/03
Date


Michael P. Nolin, Commissioner

11/12/03
Date

Attachment: Attachment 1 – June 9, 2003 Laboratory Analytical Results

CERTIFIED MAIL: 7000 1670 0000 0585 7448

cc: Mark Harbaugh - DES Legal Unit

John R. Bush, P.E.-Administrator, DES/WD/WWEB

Sharon L. Ducharme, P.E.-Supervisor, DES/WD/WWEB

Mitch Locker- DES/WD/WSEB

Joy Hilton-USEPA, Region I

David W. Dedian- Woodard & Curran, 41 Hutchins Drive, Portland, ME 04102